Lansing Police Department Internal Board of Review Issued February 28, 2008

RE: Police Shooting of Joseph Duane Carter, deceased.

An Internal Board of Review was convened at the direction of Lansing Police Department (LPD) Chief Mark E. Alley to conduct an administrative review of the use of deadly force against Joseph Carter at a Lansing Super 8 Motel on December 4, 2007. The Lansing Police Department Internal Board of Review (the Board) was comprised of Captain Edward Forrest, Lieutenant Noel Garcia, Police Legal Advisor Michael Mathis and Captain Raymond Hall who acted as Chairperson. Since a criminal investigation had been conducted by the Michigan State Police (MSP) and submitted to the Genesee County Office of the Prosecuting Attorney, the Board was charged with determining whether administrative procedures of the Lansing Police Department, detailed below, had been followed.

In reviewing this matter, Board Members examined the following records:

- 1. MSP Report # 10-431-07;0900-4
- 2. 911 Communication Center case print-out
- 3. LPD Internal Affairs report and statements
- 4. Photographs of the scene
- 5. LPD Operational Procedure 300-24, Outside Investigation
- 6. LPD Operational Procedure 600-7, Use of Force
- 7. LPD Operational Procedure 600-24, Hostages and Barricaded Person(s)
- 8. OPE Operational Procedure 600-39, Police Involved Death or Serious Injury
- 9. LPD Operational Procedure 700-11, START Chain of Command, Individual/Core Team Responsibilities
- 10. LPD Standard Operating Procedure 700-18, START Use of Flash/Sound Diversionary Devices
- 11. LPD Incident Report LLA071204090160
- 12. Letter from Genesee County Prosecuting Attorney David Leyton
- 13. Forensic Autopsy Report of Joseph Carter
- 14. Memorandum from Captain Szymanski, 1/14/2008
- 15. Michigan statutory law, MCL 764.21 regarding the right to break open an inner or outer door
- 16. Transcript of interview of Officer Scott Ellis
- 17. Diagram drawn by Officer Scott Ellis
- 18. Transcript of initial 911 call
- 19. Transcript of interview of Sergeant Steve Relyea

¹ **Note:** The Michigan State Police were asked to investigate this shooting in accordance with Lansing Police Department Operational Procedure 300-24, Outside Investigation. The Michigan State Police report was reviewed as part of this investigation, as document #1.

- 20. Transcript of interview of Sergeant Del Kostanko
- 21. Training information of Officer Scott Ellis
- 22. Training information of Lieutenant James Kraus

The Internal Board of Review

As stated, the purpose of this administrative review board was to determine if LPD employees involved followed departmental policies, procedures, and rules. Secondarily the board reviewed training and tactics of the involved employees as their actions related to:

- Critical Incident Communication
- 911 Center Recording System
- Negotiation
- Entering the Super 8 Motel room
- Using Deadly Force

Summary Statement of Witness Kathryn Stank

According to M.S.P.'s original incident report, witness Kathryn Stank stated "Joseph Carter and Kasey Carter² showed up to her apartment on Monday, 12-03-07." Kathryn Stank stated "Joseph Carter pulled out a gun and waved it around and told her to drive them around. She stated Joseph Carter was not threatening her with the gun directly but was waving it around in her car and telling her to drive them. Kathryn Stank stated she drove Joseph Carter and Kasey Carter to the Super 8 Motel. She stated she rented a room and Joseph Carter was being paranoid and told her he has stuff all over them and people were after them." On Tuesday, December 4, 2007, Joseph and Kasey used Ms. Stank's car while she stayed in the room. When the Carters returned she went outside and was checking on her car when she was contacted by two men in the parking lot. She thought they were fugitive guys.

Incident Summary

On December 4, 2007, the Lansing Police Department responded to the Super 8 Motel located at 910 American Road, Lansing, on report of a hostage situation in a room at the motel. A Bail Bondsman reported seeing a male subject armed with a handgun holding a female hostage. The incident was contained by officers surrounding the building, while additional investigation was conducted to determine what was going on.

LPD Negotiators attempted to resolve the situation with the persons inside. Sgt. Larner responded to the Super 8 shortly after the 911 call was received. Sgt. Larner attempted to negotiate with the subjects in Room 112 by utilizing his patrol car public address system. He reports that the window to the hotel room was pushed open. He attempted for approximately one and a half hours to make verbal contact with the subjects in Room 112 with negative

² Though they shared a common surname, the two were unmarried and apparently intimates.

response. Sgt. Larner was relieved by START Negotiator Officer Osborn. As the matter developed, it was discovered that the male subject in the room was identified as Joseph Carter. It was also discovered that there was an outstanding felony warrant³ for his arrest and that he was a parole absconder.

Meanwhile, LPD officers were positioned in the common interior hallway of the motel as LPD negotiators continued to attempt to resolve the situation with Joseph Carter who, along with the female subject, was located in the motel room's bathroom. Further investigation suggested this may not be a hostage situation but appeared now as a fugitive/barricaded gunman situation.

To gain additional intelligence and to attempt situational resolution, Officers entered the motel room through the window. Officers heard a shot fired in the bathroom. Fearing for the safety of whoever remained unharmed in the bathroom, a START entry team began to force entry into the bathroom. Distraction devices were deployed into the bathroom. A second shot was heard as the team entered the bathroom. Officer Frazier observed Joseph Carter holding a handgun. Officer Frazier immediately grabbed the handgun and attempted to wrestle the gun away from Joseph Carter. Officer Ellis upon his entry into the small bathroom observed Frazier struggling with Joseph Carter for control of the handgun and feared for the lives of Frazier and fellow officers just outside the room. Ellis fired one shot at Joseph Carter. This shot hit Joseph Carter and resulted in the threat being stopped.

Officer Frazier gained control of the handgun. The female was removed from the room and LFD medics were brought into the room to treat Joseph Carter. The incident was ended with the use of deadly force against Joseph Carter.

Review of the Approximate Timeline, as reported

LPD was on the scene at 1:52 p.m.

The Special Tactics and Response Team (START) arrived at 3:05 p.m.

Verbal contact inside Room 112 was effected at 3:50 p.m.

A START entry team went into the motel room at 7:09 p.m.

A shot was fired and reported at 7:35 p.m.

Two shots were fired and reported at 7:38 p.m.

The Lansing Fire Department was requested at 7:39 p.m.

MSP assistance was requested at approximately 7:45 p.m.

Critical Incident Communication

Sergeant Kostanko was assigned as a START perimeter officer for this incident. One of his duties was to function as a communications link during the incident, to relay information back and forth in the hallway outside the motel room. After the shots were fired, Sgt. Kostanko went to the command post and relayed to START Command what he believed had happened within the room. Sgt. Kostanko, who had not witnessed the events in the motel room, formulated his synopsis of the events from listening to comments made by involved officers who had been in the room.

³ The warrant had been entered into the Law Enforcement Information Network on 10-17-07.

Sgt. Kostanko described a situation where loud diversion devices were going off, officers were yelling from the room, and he says he thought he heard the word "Her" in reference to the weapon being pointed at someone's head. According to the documents reviewed for this report, officers in the room stated the weapon had been pointed at Officer Frazier's head. Sgt. Kostanko relayed misinformation that he believed was accurate to Sgt. Relyea who then relayed that misinformation to other command officers at the scene. This misinformation was later disseminated to the media.

Board Findings Regarding Communication of Critical Information

There is no evidence that Sgt. Kostanko acted with malice in relying misinformation that he believed was accurate to the START Commander. It is clear in the description of the incident that there were a number of distractions such as yelling, distraction devices, and other noises which may have contributed to the sergeant's personal confusion. Nevertheless, it is essential that timely and accurate information is relayed to others at the scene. Releasing inaccurate information created community confusion and mistrust of police actions.

The Board recommends that all LPD supervisors attend critical incident communication training and thereafter stress such communications skills to their subordinates through daily use and practice.

The Board also recommends that, a short report which includes the name of the attending physician that updates or pronounced the subject(s) medical status, the time, date and location, and the recording officer's information be submitted to the incident commander as soon as possible.

The Board concludes that this incident should not discourage this department from keeping our community well informed of critical incidents as they are unfolding. However, until the training takes place, it is of the utmost importance that all commanders at critical incidents verify the information before passing that information to the incident commander. In the event the information cannot then be verified, the information is, by definition incomplete unless it also includes a full unedited expression of the source and circumstances of the acquisition of the information. Such a communication thus provides a basis for evaluation.

911 Center Recording System

No radio log for this incident exists due to a malfunction of the radio system. There were no 911 radio recordings from 12-3-07 at 2156 hours until 12-4-07 at 2019 hours. However, a written log was created by the dispatcher assigned to the incident command post and that log was completed and included with the investigative report.

The following is a statement from the 911 Director Karen Chadwick, in a memo to Chief Mark Alley, dated December 11, 2007;

"At approximately 8 p.m. on December 4th, one of our 911 Supervisors attempted to create recordings of the START Team activation, which had taken place earlier in the day. She discovered that the radio transmission portions of

the recording were missing and contacted the Electronic Equipment Maintenance Unit (EEMU) for technical assistance.

EEMU concluded that the Windows 2003 Server had simply locked up and stopped functioning which caused all recording and logging to cease. EEMU believes the Windows 2003 Server locked up because the "C" drive, which is portioned on the recording computer to store the operating system and all of its components, had become full with temporary files, which are created during normal Windows operating conditions. During normal operation, Windows 2003 Server generates temporary files whenever Windows performs any task such as archiving files, updating dates and times, tracking user log-ins, storing log files, and running various applications. When Windows is re-booted, these temporary files are deleted from the "C" drive and Windows then has adequate hard drive space to begin storing temporary files again.

The recommendation from EEMU is to re-boot the servers once per week as part of a preventative maintenance program. This will prevent Windows from locking up and stopping due to the "C" drive filling up with temporary files.

The recording system will now be re-booted on a weekly basis. In addition, we are working with the East Lansing 911 Center to have their recorder also record many of our talk groups. We will be doing the same for them, in case they should have a failure. This gives us a backup in case of any type of malfunction in the future."

Board Findings Regarding the 911 Center Recording Systems

The Board finds that the 911 Center recording system failed due to a technical issue as described in the 911 Director's memo as outlined above. The Board finds that 911 personnel acted within the scope of their responsibility, and although this was an unfortunate technical error, it has been resolved. The safeguards taken by the 911 Center will prevent future similar incidents as related to the recording system failure. The Board concludes that this matter was quickly identified and resolved appropriately by the 911 staff.

Negotiations

Negotiations lasted for more then five and half hours. Negotiators made attempts to contact Joseph Carter and Kasey Carter in Room 112. Officer Wieber informed them to contact 911 if they did not believe the officers were the police. Joseph Carter and Kasey Carter refused to answer the room phone. Negotiators made contact with Joseph Carter and Kasey Carter's family members. No family members were able to convince the two to surrender. Negotiators informed Joseph Carter and Kasey Carter to look out the window to see police cars. Both Carters threatened suicide.

Joseph Carter and Kasey Carter had sufficient evidence to conclude that the police were at the scene and were attempting to negotiate with the two of them. According to the MSP report, Kasey Carter stated she thought the LPD may have been outside her door and the negotiator identified himself as the LPD. When Kasey Carter talked with her mother on her cell phone,

her mother told her that she could not get into the parking lot of the Super 8 Motel because of all of the police cars in the parking lot. Kasey Carter stated that both she and Joseph Carter knew that Joseph Carter had a warrant for his arrest.

The Board Findings Regarding Negotiations

The negotiation team made a reasonable effort to resolve this matter peacefully. The evidence supports the fact the Joseph Carter and Kasey Carter knew the police were attempting to negotiate with them. It is the finding of the Board that the negotiation team followed procedures, with the exception of LPD Operational Procedure 600-24, Hostage and Barricaded Persons, under Sec. D., 3.g, Maintaining a Written Record of Negotiations.

The negotiation team failed to provide a written record of the negotiations as the negotiations transpired at the scene.

The Board recommends that in the event there is no mechanical recordation of negotiations that a written record (or minutes) of the negotiations be made even if it requires that the negotiation supervisor call back a member of the LPD clerical staff to take such minutes. _The Lansing Police Department has clerical staff trained to take notes of events as they transpire.

Decision to Enter the Super 8 Motel Room

Members of the START entry team heard a shot fired in the bathroom, and began to force entry into the bathroom. Distraction devices were deployed into the bathroom. A second shot was heard as the team entered the bathroom.

This situation was handled as a barricaded person. According to LPD procedure 600-24, a "Barricaded Person(s) situation "is characterized by a subject, known or believed to be armed, in a contained location who refuses to comply with the lawful orders of LPD personnel to surrender and who may express hostility or threats to LPD officers and/or civilians."

Board Findings Regarding the Decision to Enter the Hotel Room

The Board finds that this was a 'barricaded gunman' situation involving an armed felon with a valid felony arrest warrant for parole absconding. The action of entering the room is consistent with state law⁴ as well as with departmental procedure, and training. START experience, knowledge and training provide them with the skills to process information during incidents such as this. START training focuses on dealing with volatile situations that involve interactions with dangerous and hostile persons. The officer's actions are within department procedure, training and law.

Use of Deadly Force

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⁴ "...M.C.L.A. 764.21 provides:...a peace officer, when making an arrest with a warrant or when making a felony arrest without a warrant as authorized by law, may break open an inner or outer door of a building in which the person to be arrested is located or is reasonably believed to be located if, after announcing his or her purpose, he or she is refused admittance."

A shot came from the bathroom where Joseph Carter and Kasey Carter were located. A second shot was fired from the bathroom. That shot from a Colt 45 automatic pistol narrowly missed officers. Officers made entry into the bathroom where the shots originated and confronted Joseph Carter. After a short struggle between Officer Frazier and Joseph Carter, who still had the Colt in his hand, Officer Ellis shot Joseph Carter once. Officer Ellis believed Carter posed an immediate threat of death or serious bodily injury.

According to a statement made by Kasey Carter, the police came in the door with a shield and Joseph Carter had the gun in his hand and had it pointed towards the door. She stated that Joseph Carter shot the gun one time after the first shot, an accidental discharge, while it was pointed towards the door. She stated she thinks the people outside of the door were trying to open the door when Joseph Carter shot the gun towards the door. Kasey Carter stated after Joseph Carter shot the gun, he was shot.

The Genesee County Prosecutor, David Leyton, reviewed the MSP criminal investigation of this case to determine if LPD officers had legal authority to enter the motel room and to determine if LPD officers had legal justification for using deadly force under Michigan law.

Prosecutor Leyton's wrote:

"Based upon that review, I will not authorize criminal charges against Officer Ellis for his actions arising out of this incident. From our analysis of the submitted materials, we believe that Officer Ellis' actions were justified under the described circumstances."

The Lansing Police Department's Use of Force Procedure, # 600-7, states:

"An officer is may use deadly force under the following circumstances: "In self-defense or to defend the life of another person whenever there is an honest and reasonable belief that there is an immediate threat of death or serious bodily harm."

Board Findings as to the Officer's Use of Force

The Board finds that Officer Ellis' use of Deadly force was appropriate, and consistent with LPD procedures, training and law.

Summary of Findings

After a thorough review of all available information, the Board concludes that the shooting of Joseph Carter on December 4, 2007 at the Super 8 Motel, located at 910 American, Lansing, Michigan was lawful and in accordance with departmental policies and procedures.

Summary of Recommendations

- The Board recommends that the Chief direct the training section to provide crisis communication training to all LPD supervisors. In this case, incorrect information was forwarded to the START Commander and that information was later released to the public.
- The Board recommends that the 911 recording system be re-booted on a weekly basis. In addition, the Board encourages working with the East Lansing 911 Center to have

their recorder also record our talk groups as a backup to the LPD 911 Center recording system on a regular basis or as requested in a crisis situation.

• The Board recommends that the Negotiation Supervisor call back a member of the LPD clerical staff if faced with a similar critical incident where there is no recordation of negotiations or minutes taken.

Conclusion

The inherent nature of police work is unpredictable and dangerous. Police officers must make decisions based on the facts and information available at the time an incident is taking place. Their judgment in making decisions is influenced by their training and experience. This Board concludes that the officers' actions, except where noted within this report, were within established Lansing Police Department administrative procedures.